

**Tentative Rulings**  
**April 24, 2015**  
**Department 10**

**NOTE:** This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b)(1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court's website ([www.shastacourts.com](http://www.shastacourts.com)) and are available by clicking on the "Tentative Rulings" link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

**ADVANCED SOLUTIONS PROPERTY MANAGEMENT VS. ANSELMO**  
**Case Number: 14UD0486**

**Tentative Ruling on Motion to Set Aside and Vacate Default and Default Judgment:** The Court notes the present motion is unopposed.

Defendant, Ramona Anselmo seeks to set aside her default pursuant to CCP § 473(b) based on fraud, inadvertence, mistake and excusable neglect. Defendant's argument is based on either a miscalculation of the last day to respond to the complaint or an erroneous proof of service that contains the wrong date of service. In either regard Defendant attempted to appear in this action by filing a demur but it was rejected because her default had already been taken that same day.

California Code of Civil Procedure section 473(b) provides that a default can be set aside for inadvertence, mistake or excusable neglect. Courts traditionally favor trial of causes on the merits whenever possible. *Moore v. California Mineral Products Corp.* (1953) 115 Cal.App.2d 834. Court should liberally exercise their power in setting aside defaults and default judgments. *Carbondale Mach v. Eyrand* (1928) 271 P. 349. Any doubts on a motion to set aside a default should be resolved in favor of the Defendant in order that trial on the merits may be reached. *Waite v. Southern Pacific Co.* (1923) 192 Cal. 467. A motion for relief from a default judgment is addressed to the sound discretion of the Court. *Wells v. Yankosky* (1960) 63 Cal.2d 849, 854. Said discretion should be exercised with a view of seeing that justice is done, particularly when prompt application for relief is made. *Id.* at 854-55.

Based on the above authority it is clear that Defendant is claiming a mistake occurred that justifies the setting aside the default. The mistake is calculating the time to respond based on the incorrect date or the mistake was of the process server that provided the wrong date on the proof of service. Under either scenario, Defendant's counsel attempted to demur to the complaint on the mistaken last day to respond only to find that default had already been entered. Either mistake would justify setting aside the default especially in light of the judicial policy to allow trial on the merits. *Moore, supra* 115 Cal.App.2d 834. Granting the motion is also supported by the authority that the Court's discretion should be exercised with a view of seeking that justice is done. *Wells, supra* 64 Cal.2d at 854. The Court finds that a mistake occurred as contemplated by California Code of Civil Procedure section 473(b) which warrants the setting aside of the default and default judgment.

The motion to set aside the entry of default and default judgment is GRANTED. Defendant shall prepare the order.